

48A C.J.S. Judges § 281

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

2. Interest and Relationship

a. Interest

(3) Particular Interests

§ 281. Judge as party

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In the absence of express provision to the contrary, a judge may not be disqualified by being a merely nominal party to a suit.

In the absence of express provision to the contrary, a judge may not be disqualified by being a merely nominal party to a suit¹ or by mere pendency of another lawsuit brought against the judge by one of the parties to a suit before the judge.² Also, where the case against a judge is disposed of, the judge is not disqualified from holding a hearing and adjudicating issues concerning the former adversary.³ If a judge is a party interested in the result of the litigation, the judge is, generally, disqualified,⁴ and, sometimes, by force of statute, a judge may not act in any action or proceeding

to which the judge is a party.⁵ However, where all the judges are disqualified because they are all defendants in an action, none are disqualified.⁶

A judge's disqualification is not affected by a failure to serve the judge with process,⁷ or by the judge's refusal to permit pleadings to be filed making the judge a party in good faith,⁸ or by striking out such pleadings after they have been filed.⁹ It is not necessary, in order that a judge may be disqualified, that the judge must be an actual party to the action or proceeding if the judge is in any way interested in the subject matter.¹⁰ Although the judge is not a party to the action, the judge may be disqualified if he or she would be bound by,¹¹ or have the right to come in and take the benefit of,¹² the decree or judgment which may be pronounced therein.

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Footnotes

- 1 Ind.—*State ex rel. Hatt v. Stuteville*, 242 Ind. 84, 175 N.E.2d 21 (1961).
Ky.—*Ex parte Farley*, 570 S.W.2d 617 (Ky. 1978).
- 2 Mass.—*Com. v. Leventhal*, 364 Mass. 718, 307 N.E.2d 839 (1974).
Tex.—*Citizens Law Institute v. State*, 559 S.W.2d 381 (Tex. Civ. App. Dallas 1977).
- 3 Mo.—*State v. Bosler*, 366 S.W.2d 369 (Mo. 1963).
- 4 U.S.—*Turner v. American Bar Ass'n*, 407 F. Supp. 451 (N.D. Tex. 1975), *aff'd*, 539 F.2d 715 (7th Cir. 1976) and judgment *aff'd*, 542 F.2d 56 (8th Cir. 1976).
W. Va.—*State ex rel. Preissler v. Dostert*, 163 W. Va. 719, 260 S.E.2d 279 (1979).
As to relationship to party, see § 292.
- 5 N.Y.—*Moers v. Gilbert*, 175 Misc. 733, 25 N.Y.S.2d 114 (Sup 1941), judgment *aff'd*, 261 A.D. 957, 27 N.Y.S.2d 425 (1st Dep't 1941) and order *aff'd*, 261 A.D. 957, 27 N.Y.S.2d 426 (1st Dep't 1941).
W. Va.—*Dankmer v. City Ice & Fuel Co.*, 121 W. Va. 752, 6 S.E.2d 771 (1939).
- 6 U.S.—*U.S. v. Whitesel*, 543 F.2d 1176 (6th Cir. 1976).
- 7 Tex.—*Kennedy v. Wortham*, 314 S.W.3d 34 (Tex. App. Texarkana 2010).
- 8 Cal.—*Hall v. Superior Court in and for Imperial County*, 198 Cal. 373, 245 P. 814 (1926).
- 9 Cal.—*Hall v. Superior Court in and for Imperial County*, 198 Cal. 373, 245 P. 814 (1926).
- 10 Cal.—*Hall v. Superior Court in and for Imperial County*, 198 Cal. 373, 245 P. 814 (1926).
W. Va.—*Dankmer v. City Ice & Fuel Co.*, 121 W. Va. 752, 6 S.E.2d 771 (1939).

11 W. Va.—City of Grafton v. Holt, 58 W. Va. 182, 52 S.E. 21 (1905).

12 Cal.—Lindsay-Strathmore Irr. Dist. v. Superior Court of Tulare County, 182 Cal. 315, 187 P. 1056 (1920).

W. Va.—City of Grafton v. Holt, 58 W. Va. 182, 52 S.E. 21 (1905).

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